

State of Utah
Administrative Rule Analysis

NOTICE OF PROPOSED RULE

The agency identified below in box 1 provides notice of proposed rule change pursuant to *Utah Code* Sections 63-46a-4. Please address questions regarding information on this notice to the agency. The full text of all rule filings is published in the *Utah State Bulletin* unless excluded because of space constraints. The full text of all rule filings may also be inspected at the Division of Administrative Rules.

DAR file no:		Date filed:	
Utah Admin. Code ref. (R no.):	R156-22-102	Time filed:	
Changed to Admin. Code Ref. (R no.):			
1.	Agency: Commerce/Division of Occupational and Professional Licensing		
	Room no.:		
	Building: Heber M. Wells Building		
	Street address 1: 160 East 300 South		
	Street address 2:		
	City, state, zip: Salt Lake City UT 84111-2316		
	Mailing address 1: PO Box 146741		
	Mailing address 2:		
	City, state, zip: Salt Lake City UT 84114-6741		
	Contact person(s):		
	Name:	Phone:	Fax:
	Dennis Meservy	801-530-6375	801-530-6511
(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)			
2.	Title of rule or section (catchline):		
	Definitions		
3.	Type of notice:		
	New ____; Amendment XX; Repeal ____; Repeal and Reenact ____		
4.	Purpose of the rule or reason for the change:		
	The Division and the Professional Engineers and Professional Land Surveyors Licensing Board are proposing an amendment to address an issue that was raised in 2008 regarding the ability of the Utah Department of Transportation to continue their work in regards to the design and oversight of the construction and installation of highway, utility or pedestrian bridges without their employees being licensed as structural engineers. As a result of a review of the governing statute, Title 58, Chapter 22, it has been determined that this proposed amendment will help clarify that this type of work does not require a structural engineering license.		
5.	This change is a response to comments from the Administrative Rules Review Committee.		
	Yes ____; No XX		
6.	Summary of the rule change:		
	Paragraph (6) is being added to indicate that the definition of professional structural engineering or the practice of structural engineering excludes the design and oversight of the construction and installation of highway, utility, or pedestrian bridges. Remaining paragraphs have been renumbered.		
7.	Aggregate anticipated cost or savings to:		

	A) State budget:																				
	As a result of this proposed amendment, no change in current operations of the Utah Department of Transportation will be needed and there will be no direct fiscal impact to their budget. The Division of Occupational and Professional Licensing will incur minimal costs of approximately \$50 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.																				
	B) Local government:																				
	Proposed amendment only applies to operations within the Utah Department of Transportation; therefore, the proposed amendment does not apply to local governments and no costs or savings are anticipated.																				
	C) Small businesses (fewer than 50 employees) AND persons other than businesses:																				
	The proposed amendment only applies to operations within the Utah Department of Transportation. Since no change in current operations within the Utah Department of Transportation is needed as a result of the proposed amendment, there will be no direct impact on small businesses and persons other than businesses.																				
8.	Compliance costs for affected persons ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization or any character other than an agency): No costs for affected persons are anticipated since the proposed amendment only applies to operations within the Utah Department of Transportation and no additional changes will need to be made within that Department as a result of the proposed amendment.																				
9.	Comments by the department head on the fiscal impact the rule may have on businesses: Pursuant to authority granted to the Division in Utah Code Ann. 58-22-102(14), this rule filing clarifies the definition of "professional structural engineering or the practice of structural engineering" to exclude the design and oversight of the construction and installation of highway, utility or pedestrian bridges. No fiscal impact to businesses is anticipated from such clarification. Francine A. Giani, Executive Director																				
10.	This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required): Section 58-22-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)																				
11.	This rule adds, updates, or otherwise changes the following titles of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank): 																				
12.	The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the <i>Utah State Bulletin</i> . See Section 63-46a-5 and Rule R15-1 for more information.) <table border="1" data-bbox="251 1407 1435 1701"> <tr> <td data-bbox="251 1407 1063 1449">A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):</td> <td colspan="2" data-bbox="1063 1407 1435 1449">03/31/2009</td> </tr> <tr> <td colspan="3" data-bbox="251 1449 1435 1480">B) A public hearing (optional) will be held:</td> </tr> <tr> <td data-bbox="251 1480 641 1522">on (mm/dd/yyyy):</td> <td data-bbox="641 1480 1063 1522">at (time):</td> <td data-bbox="1063 1480 1435 1522">At (place):</td> </tr> <tr> <td data-bbox="251 1522 641 1627">03/18/2009</td> <td data-bbox="641 1522 1063 1627">9:00 am</td> <td data-bbox="1063 1522 1435 1627">160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah</td> </tr> <tr> <td data-bbox="251 1627 641 1669"></td> <td data-bbox="641 1627 1063 1669"></td> <td data-bbox="1063 1627 1435 1669"></td> </tr> <tr> <td data-bbox="251 1669 641 1701"></td> <td data-bbox="641 1669 1063 1701"></td> <td data-bbox="1063 1669 1435 1701"></td> </tr> </table>			A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy):	03/31/2009		B) A public hearing (optional) will be held:			on (mm/dd/yyyy):	at (time):	At (place):	03/18/2009	9:00 am	160 East 300 South, Conference Room 474 (4th floor), Salt Lake City, Utah						
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13.	This rule change may become effective on (mm/dd/yyyy): 04/07/2009 NOTE: The date above is the date on which this rule MAY become effective. It is <i>NOT</i> the effective date. After the date designated in Box 12(A) above, the agency <i>must</i> submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.																				

14.	Indexing information -- keywords (maximum of four, in lower case, except for acronyms (e.g., "NASA") or proper nouns (e.g., "Medicaid")):		
	engineers	surveyors	
	professional land surveyors	professional engineers	
15.	Attach an RTF document containing the text of this rule change (filename):		R156-22.pro
To the agency: Information requested on this form is required by Sections 63-46a-4, 5, 6, and 10. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the <i>Utah State Bulletin</i> , and delaying the first possible effective date.			
AGENCY AUTHORIZATION			
Agency head or designee, and title:		F. David Stanley, Director	Date (mm/dd/yyyy): 02/09/2009

R156. Commerce, Occupational and Professional Licensing.

R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or this rule:

(1) "Complete and final" as used in Section 58-22-603 means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision" as used in Subsection 58-22-102(10) means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee" as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys" as used in Subsection 58-22-102(9) include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is in an area where the licensee has demonstrated competence by adequate education, training and experience;

(c) arises from, and is directly related to, work performed in the licensed profession;

(d) is substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession; and

(e) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1).

(6) "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the construction and installation of highway, utility, or pedestrian bridges.

([6]7) "Recognized jurisdiction" as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country who issues licenses for professional engineers,

professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time engineering experience under supervision of one or more licensed engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE).

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time engineering experience under supervision of one or more licensed engineers;

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

([7]8) "Responsible charge" by a principal as used in Subsection 58-22-102(7) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

([8]9) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

([9]10) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

([10]11) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

KEY: engineers, surveyors, professional land surveyors, professional engineers

Date of Enactment or Last Substantive Amendment: [~~October 23,~~
~~2008~~] 2009

Notice of Continuation: November 15, 2007

Authorizing, and Implemented or Interpreted Law: 58-22-101; 58-1-
106(1)(a); 58-1-202(1)(a)